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10/616,593	07/11/2003	Hongzhi Bao		3650

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EXAMINER

FISCHMANN, BRYAN R

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,593

Applicant(s)

BAO, HONGZHI

Examiner

Bryan Fischmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Specification

1. The abstract of the disclosure is objected to because of the following:

A) The recitation of "new" on line 3 of the abstract is objected to, as it is considered the "opinion" of the Applicant whether this invention is found to be "new" or not.

B) It is considered unclear what is meant by "complete design" in the last line of the abstract, as it is not believed Applicant would submit a "partial design".

C) The recitation of "photos" in the last line of the abstract is objected to, as the Applicant should describe the invention, as opposed to what is included in the application, in the abstract.

2. The disclosure is objected to because of the following:

A) The following recited phrases are unclear, awkwardly worded, and/or grammatically incorrect:

Note: The specification is considered replete with instances of awkward and sometimes unclear wording. Therefore, the Examiner cannot guarantee the following is a comprehensive listing of all awkward and unclear wording. Applicant is advised to review the specification for awkward and unclear wording.

1) The recitation of "new" in line 3 of page 1 of the specification is objected to for reasons set forth above.

See also line 12 of page 4.

2) Lines 15-17 of page 1 recites "two driving wheels mounted at the left and right corners of the rear end of the driving triangular base respectively".

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This recitation would imply that there are two wheels on the "left corner" and two wheels on the "right corner" for a total of four wheels. This is not consistent with the drawing figures.

3) To improve wording, the word "the" should appear before the word "top" on line 19 of page 1.

4) The recitation of "idle rear wheels" on line 20 of page 1 is objected to, as the term "idle" in the above recitation would imply that the wheels do not rotate. As best understood, the rear wheels (9) always rotate.

5) The recitation of "wheel" on line 20 of page 2 should instead be "wheel(s)", as Applicant anticipates the possibility of the use of both one and two wheels.

6) The recitation of "the car flip-over" on line 1 of page 3 is considered awkward.

7) When read in context, the recitation of "loose" on line 7 of page 3 is considered unclear.

8) It is considered unclear what is being referred to by the recitation of "single unit" on line 17 of page 3.

9) The term "invention" is considered more appropriate than the word "final design" on line 19 of page 3.

See also lines 21 and 23 of page 3 and the first four lines of page 4

10) It is believed that wording would be improved if the word "butterfly" were not present between the words "steering" and "wheel" on lines 5 and 6 of page 4.

B) The following inconsistencies in nomenclature were noted:

1) Line 22 of page 4 recites "auxiliary wheel 14". Line 23 of page 4 recites "axle 14".

2) It is noted that the reference numbers used in Figures 3 and 4 do not match the reference numbers used in Figures 1 and 2. The Applicant should assign a reference number to only represent a single component throughout the specification and all drawing figures, and not to separate components on Figures 1 and 2 versus Figures 3 and 4, as was done in the Application.

To avoid confusion to the reader, and to facilitate identifying components by nomenclature in the claims, it is requested Applicant use consistent nomenclature for the same reference number throughout the specification.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign mentioned in the description: 15 (Figure 1). Correction is required.

4. The drawings are objected to, as all reference numbers in Figures 3 and 4 are used to represent different structure than the same reference number in Figures 1 and 2. For example, reference number 2 on Figures 1 and 2 is a "steering wheel" and reference number 2 on Figure 4 is a "ground-engaging wheel".

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "one plastic plate

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on each side of the top portion” as recited in claim 3 and the “polygon-shaped cylinder” as recited in claim 6 must be shown or the feature canceled from the claim. No new matter should be entered.

Claim Objections

6. Claims 1-9 are objected to because of the following:

Note: The claims are considered to be replete with objectionable matter.

Therefore, a comprehensive listing of all objectionable matter cannot be guaranteed.

Applicant is advised to review all claims for unclear matter.

A) The word “new” recited in the first line of claim 1 is objected to for reasons already set forth in this Office Action.

B) To improve wording, the word “a” should appear before the word “driving” in line 2, and before the words “steering” and before the word “soft” in line 4 of claim 1.

C) It is considered unclear why the word “bar” appears in parenthesis in line 4 of claim 1. Normally, words or numbers that appear within parenthesis are not given patentable weight. Generally, only reference numbers appear within parenthesis in the claims.

D) The term “soft safe seating base” recited in the fourth line of claim 1 is objected to due to the following:

1) Since Applicant has disclosed that the “kid-powered car” is made of plastic, the term “soft” would seem to be inaccurate.

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2) The term "safe" is considered unnecessary, and may be considered an "opinion", as no inventor is going to knowingly make an "unsafe seat". Generally, only structure and the functioning of the structure may be claimed, and not opinions such as "new", "better", "safer", etc., unless there is evidence that these terms are proper.

See also the recitation of "soft" in claim 2.

E) Some claims (e.g. 2 and 6 and 7, for example) have a "period" before the end of the claim. Note that Section 608.01(m) of the Manual of Patent Examining Procedure (MPEP) states; "Each claim begins with a capital letter and ends with a period". Due to this, a period should only appear at the end of the claim and there should not be more than one period in a claim.

F) The recitation of "one plastic plate on each side of the top portion of the body" in claim 3 is objected to, as the "plastic plate" is best understood to be reference number 1. Note that Figure 1 shows reference number 1 is on the "lower portion" of the car body.

G) Claim numbers in dependant claims should not appear within parenthesis. Only reference numbers should appear within parenthesis within the claims. Note dependant claims 2-8 contain claim numbers within parenthesis.

H) Though perhaps not strictly objectionable, the recitation of "As claimed in claim...". that appears in dependant claims 2-8 is "unconventional wording", and may be improper, if this recitation is interpreted so as not to include all of the limitations of the claim upon which the dependant claim depends. Note that when the dependant claims are read in context, it is noted that only one portion of the "car" is being referred to,

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leaving the possibility that, when read in context, that the dependant claims could be construed to limit only a portion of the car, as opposed to the "entire car", due to the above recited preamble present in the dependant claims.

I) To improve wording, the word "a" should be present before the word "driving" on line 2 of claim 4.

J) Reference numbers "7" and "9" which appear in claim 6 should be within parenthesis.

See also reference number 5 in claim 7.

K) The recitation of "polygon shaped cylinder 6" recited in claim 6 is objected to, as reference number 6 does not appear to be "polygon shaped", from examination of Figures 1 or 3. Instead, reference number 6 on Figure 3 appears to be "square", or "round".

L) Claims 8 and 9 are objected to under 37 CFR 1.75(c) as being in improper form because claims 8 and 9 depend from multiple dependent claim 5. See MPEP § 608.01(n). Accordingly, the claims 8 and 9 have not been further treated on the merits.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant regard as his invention.

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Note: The claims are considered to be replete with unclear matter. Therefore, a comprehensive listing of all unclear matter cannot be guaranteed. Applicant is advised to review all claims for unclear matter.

A) Claim 1 recites the limitation "the top portion". There is insufficient antecedent basis for this limitation in the claim.

See also the last line of claim 3.

B) Claim 4 recites the limitation "the auxiliary wheel". There is insufficient antecedent basis for this limitation in the claim.

C) Claim 4 recites the limitation "the front arm". There is insufficient antecedent basis for this limitation in the claim.

D) Claim 5 recites the limitation "the driving triangular base". There is insufficient antecedent basis for this limitation in the claim.

E) The meaning of the term "enhancing frames" recited on the last line of claim 5 is considered unclear.

F) Claim 6 recites the limitation "the shaft base". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

10. Claims 1, 4 and 5, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Gu, et al, US Patent 6,722,674.

Gu teaches a kid-powered entertainment car which comprises:

a car body (1), a driving triangular base (23), two rear wheels (31 and 32) mounted at the rear of the body, a shaft base (11), a steering wheel (12), and a seating base (Figure 9) installed on a top portion of the body at the rear end of the car.

Regarding claim 4, the "single directional wheel" is selected.

Regarding claim 5, see the lower portion of reference number 2.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable Gu, et al, US Patent 6,722,674.

Gu fails to explicitly state that the car body is made of plastic.

However, note that it is considered within the skill level of one of ordinary skill in the art to select a material based on it's intended use. See *In re Leshin*, 125 USPQ 416. Plastic is a suitable material for the car body, as plastic is relatively inexpensive, easily formed, lightweight and non-corrosive.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to manufacture the car body of Gu out of plastic.

Regarding claim 3 see reference numbers 51 and 52 and the claim objection to claim 3.

13. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable Gu, et al, US Patent 6,722,674, in view of Chang, US Patent Application Publication 2002/0167146.

Gu fails to teach how the shaft is connected to the base is connected to the wheel assembly.

However, Chang teaches a shaft (16) connected to a wheel assembly (22) by a pin (Figure 1). A pin is advantageous to connect to a shaft to a wheel assembly on an a kid-powered entertainment car, as the pin allows relative movement to occur between the shaft and the wheel assembly.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to connect the shaft and wheel assembly of the car body of Gu with a pin, as taught by Chang.

Regarding claim 7, note also that Section 2113 of the MPEP recites "the patentability of a product does not depend on its method of production". Section 2173.05(p) of the MPEP also recites "A claim to a device, apparatus, manufacture, or composition of matter may contain a reference to the process in which it is intended to be used without being objectionable...so long as it is clear that the claim is directed to the product and not the process". From this, the process by which the base is formed, as recited in claim 7 is not considered germane, since the claim is directed to an apparatus. Therefore, the recitation of "molded" and "filled with plastic" in claim 7 has been given patentable weight only to the extent that the peg in the prior art is capable of being molded.

Regarding claims 8 and 9, see the claim objection to claims 8 and 9.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Wang, et al, Jang, Gu, Wei, Wang (2 documents) and Chen – teach a child's vehicle similar to Applicants

15. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 9:00 to 5:30.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis, can be reached on (703) 308-2560. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


BRYAN FISCHMANN
PRIMARY EXAMINER